

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION**

JANE DOE 1, et al	§	
	§	
Plaintiffs	§	Civil Action No. 6:16-CV-173-RP-AWA
	§	
v.	§	<i>Consolidated with</i>
	§	6:17-CV-228-RP-AWA
	§	6:17-CV-236-RO-AWA
BAYLOR UNIVERSITY,	§	
	§	
Defendant	§	

**NON-PARTY JUAN ALEJANDRO’S ADVISORY IN RESPONSE TO PLAINTIFFS’  
JANUARY 24, 2020 ADVISORY TO THE COURT<sup>1</sup>**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Non-Party Juan Alejandro and files this Advisory in Response to Plaintiffs’ January 24, 2020 Advisory to the Court and would show as follows:

In response to the Court’s directive (Dkt.# 759), Plaintiffs filed an Advisory which contained the following statement regarding the status of their dispute regarding a subpoena previously served on Juan Alejandro:

Mr. Alejandro has provided the parties with a log of the documents in his possession as noted on ECF 594 which states “To the extent no party asserts privilege over any of the documents identified on the Document Log provided to Counsel, these documents will be produced.” Baylor’s counsel identified three documents in an email dated January 29, 2019 that they believed to be privileged. To date, documents from Mr. Alejandro have not been produced, and Plaintiffs have not been successful in resolving this issue.

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<sup>1</sup> The header on Plaintiffs’ Advisory identifies this document as Dkt# 778 (filed 1/10/20), but Alejandro was served with this document on January 24, 2020. See Exhibit 1. It is unclear why the date of filing differs from the date of service.

Plaintiffs' statement to the Court that no documents were produced by Mr. Alejandro is inaccurate. On January 31, 2019, counsel for Alejandro produced documents that were Bates numbered "Alejandro (non-party) 000001-000052." *See* Exhibit 2. Two emails, which counsel for Baylor stated he believed contained privileged information that must be withheld or redacted, were not produced by Alejandro in response to this assertion of Baylor's privilege. *Id.* Counsel for Baylor also confirmed in his correspondence that those emails were already in Baylor's database. *Id.* A third email listed on Alejandro's Document Log was identified by counsel for Baylor as likely privileged, based on the description provided by Alejandro's counsel. *Id.* Counsel for Baylor reserved the right to claw back any privileged document that Mr. Alejandro might produce, referencing the Court's Claw Back Order (Dkt.#583).

Plaintiffs now assert that they have been unsuccessful in resolving this issue, but Mr. Alejandro has no idea what efforts, if any, Plaintiffs have made to do so. Counsel for Alejandro has not been contacted by Plaintiffs' counsel. Alejandro does not know if the court has ruled on Baylor's claims of privilege for these documents or if Plaintiffs have even sought such a determination from the Court. As a non-party, Alejandro cannot be reasonably expected to closely monitor each motion, order, or other ruling in this case. If two of the three emails were properly discoverable by Plaintiffs, then Baylor has or should produce those in accordance with the Court's orders. It is unnecessary for Alejandro to produce a copy of the same document Baylor has already produced. That information is already in Plaintiffs' possession, and the prior request to Alejandro is moot.

As for the other email, Alejandro was advised by Baylor's counsel that he believes the substance of that email is privileged. *Id.* Alejandro has not been informed of any court ruling on this claim of privilege or of any efforts by Plaintiffs to challenge that claim. Should the Court

wish to examine this email (or the other two emails) in order to rule on Baylor's assertions of privilege, Alejandro awaits the Court's instruction to submit these documents for an *in camera* review.

Respectfully submitted,

By: /s/ Andrew T. McKinney

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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing document was served by ECF electronic filing on all known parties on this 28th day of January, 2020.

/s/ Andrew T. McKinney

**Andrew T. McKinney**